

Appl. No. 10/810,002
Amendment F dated July 9, 2009
Resp. to O.A. dated April 24, 2009

PATENT
Docket No. J-3949

Remarks

Claims 19-26, 28, 29, 43-46, and 48-54 are pending and at issue in the present application, claims 3, 5, 6, 17, 27, 30-35 and 40 having been withdrawn from consideration, claims 1, 2, 4, 7-16, 18, 36-39, 41, 42, and 47 having been canceled in a previously filed amendment, claim 17 canceled herein, and new claim 54 added herein.

Claims 19, 24, 43, and 51 have been amended herein. Support for the amendments to claims 19 may be found at least on page 8, lines 14-16 and 24-30, and in FIGS. 9-11 and 14. Support for the amendments to claim 43 may be found at least on page 8, lines 12-14, and in FIGS. 9, 10, and 13. Claim 51 has been amended for clarity. Support for the amendments to claim 24 and for new claim 54 may be found at least on page 5, lines 21-24, and in FIGS. 4, 5, 9, and 10.

As a preliminary matter, applicants would like to thank Examiner Jacyna for the courtesies extended in an interview with Ayhan Mertogul and the undersigned on June 22, 2009. During the interview, Batistelli et al. U.S. 3,473,799 was discussed in regard to claims 19, 43, and 51. Although no specific claim language was finalized, the examiner agreed that language more clearly defining the structure of the actuating cap would define over the above-noted §112 and §102(b) rejections. The remarks and amendments herein summarize and amplify the discussions during the interview.

Applicants respectfully traverse the rejection of claims 19-26, 28, 29, and 51-53 as indefinite under §112, second paragraph. Claims 19 and 51 have been amended as noted above to overcome such rejections.

Applicants further traverse the rejection of claims 43-46 as anticipated by Batistelli et al.

Claim 19, and claims 20-26, 28, and 29 dependent thereon, as amended, recite an actuator cap including a main wall that extends generally along an axial dimension thereof and has a varying cross sectional size. A flexible actuator member integrally extends from the main wall transverse to the axial dimension and terminates at an outer peripheral surface that extends laterally beyond a portion of the main wall but does not extend beyond a greatest lateral extent of the main wall. An upright portion having a curved outer surface is disposed adjacent the flexible actuator member. The curved outer surface is adapted to engage with an internal surface of a housing to guide the flexible actuator member and prevent inadvertent actuation of the flexible actuator member.

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Claim 43, and claims 44-46 and 48-50 dependent thereon, as amended, recite an actuator cap including a main wall that decreases in cross sectional size along an axial dimension defined between first and second ends of the main wall. A flexible actuator member extends transversely to the axial dimension and terminates at an outer peripheral surface that extends laterally beyond a portion of the main wall but does not extend beyond a greatest lateral extent of the main wall. An upright portion having a curved outer surface is disposed adjacent the flexible actuator member. The curved outer surface prevents inadvertent actuation of the flexible actuator member and the upright portion includes an arcuate gusset on an internal surface thereof.

Claim 51, and claims 52 and 53 dependent thereon, as amended, recite an actuator cap and a housing therefor including a main wall that extends generally along an axial dimension thereof and has a varying cross sectional size. A flexible actuator member extends transversely to the axial dimension and terminates at an outer peripheral surface that extends laterally beyond a portion of the main wall but does not extend beyond a greatest lateral extent of the main wall. An upright portion having a curved outer surface is disposed adjacent the actuator member. The curved outer surface is engageable with an internal surface of the housing to guide the flexible actuator member and prevent inadvertent actuation of the flexible actuator member. The housing includes a housing wall that tapers to a discharge opening and is adapted to secure a container therein that has a radius smaller than the discharge opening such that the outer peripheral surface is disposed in interfering relationship with the housing wall when the container and the actuator cap are disposed in the housing.

Batistelli et al. does not disclose or suggest an actuator cap including a flexible actuator member that integrally extends from a main wall transverse to an axial dimension of the main wall, as required by claims 19-26, 28, and 29. Batistelli et al. also does not disclose or suggest an actuator cap including a main wall that decreases in cross sectional size along an axial dimension defined between first and second ends of the main wall, as required by claims 43-46 and 48-50. Further, Batistelli et al. does not disclose or suggest an actuator cap and a housing therefor, the housing including a housing wall that tapers to a discharge opening and is adapted to secure a container therein that has a radius smaller than the discharge opening such that an outer peripheral surface of the actuator cap is disposed in

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interfering relationship with the housing wall when the container and the actuator cap are disposed in the housing, as required by claims 51-53.

In fact, Batistelli et al. discloses a tool for cleaning walls that includes a body 12 integrally extending from a pole handle 17. Spaced upper and lower container holding arms 20, 21, 22, and 23 are integral with and extend from the body 12. An aerosol container 24 is held between the upper arms 20, 21 and the lower arms 22, 23. An actuating arm 30 is integral with and extends from a top portion of the body 12 and includes a hole 36 disposed therethrough and aligned over an actuation knob 26 on the container 24. A cord 35 is passed through the hole 36 and is guided through holes in the container holding arms 20, 21, 22, 23 such that opposite ends of the cord 35 are attached to a bracket 40 in spaced relation to the pole handle 17 and disposed below the arms 20, 21, 22, 23. Deflecting the cord 35 toward the pole handle 17 causes the actuating arm 30 to deflect sufficiently to engage the actuation knob 26 on the container 20.

In order for a claim to be anticipated, a single prior art reference must show all of the recited limitations arranged or combined in the same way as recited in the claim. *Net Money, Inc. v. Verisign, Inc.*, No. 2007-1565, slip op. at 14-15 (Fed. Cir. Oct. 2008). Accordingly, Batistelli et al. cannot anticipate the claims at issue. Reconsideration and allowance of the claims at issue are respectfully requested.

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Deposit Account Authorization

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

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